

## **CHAPTER 5**

### **CONTRACT ADMINISTRATION AND MANAGEMENT**

5-1. Introduction. This chapter addresses certain, but not all, aspects of A-E contract administration and management. Chapters 6 and 7 address in detail two other very important aspects of A-E contract administration - evaluating performance and enforcing design responsibility, respectively.

5-2. Principles.

a. A-E contracts will be proactively managed to ensure the timely delivery of quality products and services.

b. A-E firms will be treated fairly and professionally.

5-3. General. The administration and management of an A-E contract is a team effort among the KO, contract specialist, contracting officer's representative (COR) and other technical personnel, the PM, and others. The primary functions in administering and managing an A-E contract are:

a. Monitoring the A-E firm's performance, ensuring compliance with the contract, and enforcing the responsibility of the firm for the quality of its work.

b. Ensuring the firm has an adequate quality control process, and reviewing the A-E products for conformance with the technical requirements of the contract.

c. Evaluating the firm's performance.

d. Maintaining liaison and direct communications with the A-E firm, and promptly resolving any questions and issues that may arise.

e. Providing required Government-furnished information and materials, and arranging access to work areas.

f. Paying the firm in a timely manner for satisfactorily completed work.

g. Modifying the contract as required to accommodate changes in requirements.

h. Closing out the contract.

5-4. Contracting Officer's Representative.

a. The appointment and responsibilities of a COR are described in DFARS 201.602-2. A COR assists the KO with technical monitoring and administration of the contract. A COR must have the training listed in paragraph 4-4.b as well as any other training specified by the

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KO, and have considerable experience in contract administration. There is no regulation which precludes a Government employee that participated in the evaluation boards for and/or negotiation of an A-E contract from being a COR on that contract. However, the KO may impose such restrictions if necessary to ensure the integrity of the system of checks and balances.

b. A COR may be in any organizational element<sup>1</sup> as long as the COR is in a position to directly monitor an A-E firm's performance and the system of checks and balances is maintained. During construction, an appropriate, qualified person in the field office may be appointed as COR for an A-E contract, especially if the A-E firm is required to provide certain construction phase services<sup>2</sup>.

5-5. Quality Management. The quality management procedures, practices and tools in ER 1110-1-12 will be employed to ensure that the A-E firm delivers excellent engineering and design services and products to the customer on schedule and within budget.

5-6. ID Contracts.

a. Management of Contract Limitation. An ID contract is typically used by more than one organizational unit. Hence, a process must be established for all ID contracts to reserve an estimated amount for a planned task order and to track the actual prices of orders to ensure the limit for the contract or contract period (if applicable) is not exceeded.

b. Contract Limitations. See EFARS 36.601-3-90 regarding limitations on the amount and duration of A-E ID contracts, and waivers thereof. See EFARS 16.5 on general guidance for ID contracts, and paragraph 4-18.b regarding the minimum guarantee.

c. Ordering. See EFARS 16.505(b)(1). When two or more ID contracts contain the same or overlapping scopes of work (including, but not necessarily, multiple award contracts) so that a particular task order might be issued under more than one contract, the contract file must be documented to show the basis for selecting a particular contractor for negotiation of a task order.

d. Installation Use of ID Contracts. When authorized by a USACE command, installations may use USACE A-E ID contracts (AFARS 5136.600-90 and EFARS 36.601-3-90(i)). Qualified public works personnel may be appointed as COR to administer orders. Also, if mutually agreed between USACE and the installation, an installation KO may be appointed as an ordering officer to issue task orders. In any case, the USACE KO shall

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<sup>1</sup> For example, a PM may be a COR, depending on local practices.

<sup>2</sup> Construction phase services include, for example, design modifications to accommodate unforeseen site conditions or criteria changes, review of contractor value engineering change proposals, site visits to evaluate the acceptability of completed construction or monitor certain tests, review of shop drawings, and assistance with commissioning.

provide written instructions to the installation KO and facilities engineering personnel regarding the limitations and procedures for the negotiation, issuance and administration of task orders. These instructions will address USACE and installation responsibilities, and include:

- (1) SOW preparation.
- (2) Requirements for preparation of an IGE (FAR and EFARS 36.605, and Appendix X).
- (3) Negotiation procedures, including compliance with the 6 percent statutory limitation (DFARS 236.606-70). Also indicate that any failure to reach agreement must be referred to the USACE KO.
- (4) Preparation of the DD Form 1155.
- (5) Funding and payments.
- (6) Requirement for design within the construction funding limitations (FAR 36.609-1).
- (7) Enforcing the responsibility and liability of the A-E firm for design errors or deficiencies (FAR 36.608 and 36.609-2, and Chapter 7).
- (8) Resolution of disputes.
- (9) Preparation of performance evaluation (FAR and EFARS 36.604, and Chapter 6).
- (10) Contract documentation.

5-7. Payments.

a. FAR 52.232-10 is the payment clause for A-E contracts. The payment clause and process should be discussed with an A-E firm during negotiations. The clause allows for monthly progress payments. The contract (typically under Section G, Contract Administration Data) should specify the format of the payment request (typically ENG Form 93, Payment Estimate - Contractor Performance is used) and any required supporting data, such as a written description of the work completed in the payment period, a bar chart of work progress, and example work products. Payments are by electronic funds transfer in accordance with the Debt Collection Act of 1996, and must be made promptly in accordance with FAR 52.232-26, Prompt Payment for Fixed-Price A-E Contracts. Generally, payment must be made within 30 days after receipt of a proper invoice from a contractor.

b. The PM, COR and/or other technical staff may also visit the A-E firm's office to verify progress. The COR will reduce the payment estimate, if warranted, to conform to the

actual satisfactory progress and promptly notify the A-E firm in accordance with the prompt payment clause (FAR 52.232-26). Typically, the KO delegates the authority to approve progress payments to the COR. However, the KO usually approves the final payment.

c. The payment clause allows for up to 10 percent of an approved progress payment to be retained to protect the interests of the Government. However, retainage should not be automatically withheld from each payment if the PM and COR is certain of the progress and the quality of the completed work. Retainage should not be held in an amount greater than, or for a period longer than, absolutely needed to protect the Government. All retainage should be paid when discrete phases of the project are satisfactorily completed. Retainage shall never be applied in a punitive manner. Also see the guidance in FAR 32.103 which is equally applicable to A-E contracts.

5-8. Subcontract Reporting. A contractor must report semiannually on its progress in complying with the subcontracting goals agreed to in the subcontracting plan using SF 294, Subcontracting Report for Individual Contracts, and SF 295, Summary Subcontract Report (FAR Clause 52.219-9). The contract administration team must ensure that the A-E firm makes a good faith effort to comply with the subcontracting plan and submits the required reports to the KO in a timely manner. Compliance with the subcontracting plan is an attribute on the A-E performance evaluation form.

5-9. Resolving Performance Problems. Proactive day-to-day oversight of an A-E contract by the PM, COR and/or other technical staff, including frequent communications with the firm, will prevent most A-E performance problems. However, the A-E firm must be promptly advised whenever its performance is marginal or unsatisfactory. If performance continues to be marginal or unsatisfactory, the Government shall take stronger action to improve the firm's performance. The following methods, in general order of increasing impact and severity, should be used to resolve A-E performance problems:

- a. Verbal notice to the firm by the COR. Document in the contract file. (The COR should keep the KO informed on any corrective action.)
- b. Letter to the firm from the COR citing specific deficiencies and required corrective action.
- c. Meeting between the firm and the COR and possibly PM. Document in the contract file.
- d. Meeting between the firm and the Chief of Engineering. Inform the firm that an interim "marginal" or "unsatisfactory" performance evaluation will be prepared if its performance does not promptly improve, and that this evaluation could affect its selection for other contracts. Document in the contract file.
- e. An interim "marginal" or "unsatisfactory" performance evaluation in accordance with the procedures in Chapter 6.

f. Meeting between the firm and the KO and PM and/or COR. Document in the contract file.

g. A “cure” notice to the firm from the KO (FAR 49.402-3(c) and (d)). The cure notice must cite the specific deficiencies, required corrective actions, and suspense date.

h. A “show” cause notice to the firm from the KO (FAR 49.402-3(e)), notifying the firm of the possibility of termination.

i. A final "marginal" or “unsatisfactory” performance evaluation.

j. Termination for default (FAR 49.4), which shall always be accompanied by a final “unsatisfactory” performance evaluation.

Also, see Chapter 7 regarding an A-E firm's responsibility for errors or deficiencies in design or other services discovered after completion of the contract work.

#### 5-10. Contract Closeout.

a. An A-E contract must be closed out promptly after satisfactory completion and delivery of all required services and products. However, in the case of an A-E contract for the design of a particular construction project, A-E services are often required during the construction period that can not be definitively anticipated or priced when the contract is awarded (or even when the design is completed). The A-E contract should typically remain open to readily accommodate these potential changes.

b. In order to preserve the Government’s ability to add work during the construction period that can not be quantified or priced at the time of the award of the original contract, the synopsis and the scope of an A-E contract for the design of a particular project should include a statement that additional work is contemplated (list the types of possible services such as in the footnote 2) during the construction period and may be added pursuant to the Changes clause (FAR 52.243-1, Alternate III). It is not acceptable to withhold earned payment from a firm as a means to keep the contract open.

c. FAR 4.804 provides general procedures for contract closeout. For an A-E contract, the following additional actions are required:

(1) All liability actions resolved.

(2) Performance evaluation(s) prepared, approved and distributed.

(3) Return of all Government-furnished materials.

(4) Release of claims executed.

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(5) Final SFs 294 and 295.